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SUBJECT: FORCED LABOR AND CHILD LABOR INFORMATION FOR MANDATORY
US-KOREA FREE TRADE AGREEMENT/TPA REPORTING REQUIREMENTS

REF: A. STATE 48091 B. Seoul 587

11. (U) The following responses are keyed to questions posed in ref
1A.

Nature and Incidence

12. (U) Question: Does forced labor exist in the country? Are men, women or children exploited through forced labor? Please indicate the sectors and locations in which persons are engaged in forced labor. Please also indicate the products that persons involved in forced labor mine, produce, or manufacture. Please be specific and provide all information for men, women and children separately, noting gender and age-specific information whenever possible. Provide details on the terms of employment or the working conditions that characterize the work as forced labor. For example, are persons confined to the workplace; are wages withheld or has the employer refused to pay employees; have the workers' passports or identity documents been withheld; has the employer threatened to denounce the worker to authorities; or is the worker paying off a debt that has been incurred with the employer? Based on these examples, do the conditions of workers employed by South Korean companies in the North Korean enterprise zones qualify as forced labor? Please also provide information on the issue of debt bondage in the sex industry in South Korea.

-For the last three years since the Ministry of Labor (MOL) began collecting the data, (from 2004 to 2006), workplace labor inspectors reported no violations of Article 7 (Prohibition on Forced Labor) of the Labor Standards Act.

-As of 2006, The Ministry of Education reported that the percentage of school enrollment of children in Korea (the total number of students divided by the number of children of school-age) was 99 percent in elementary school, 95.9 percent in middle school, and 91 percent in high school. These statistics may indicate that there is relatively little opportunity for children to be engaged in forced labor given the high rate of school attendance. There are no reports from the media or NGOs about child labor in Korea.

-Between January 1 and May 8, 2007, the MOL said that eight cases of forced labor were either concluded with administrative measures (five) or dropped (i.e. no prosecution) (three). These eight cases were filed individually by one woman, six men and one unidentified person. No cases involving minors were reported.

-The Ministry of Unification reported that the number of the North Korean workers at the Kaesong Industrial Complex (KIC) amounted to 13,561 as of May 3, 2007. The average age was 31.2 and 80 percent of the workers were female and 20 percent were male.

-Although North Korean workers at KIC do not enjoy the same benefits and privileges as South Korean workers employed in the South, the working conditions at KIC are generally regarded among the best in North Korea and employment in KIC is highly sought after by North Korean workers. There are reports that workers do not receive their pay directly and several types of deductions are withheld by the DPRK administrators of the KIC before the pay is distributed to the workers.

-The MOL reported that the average wage of North Korean workers at KIC is USD 60.3 which is two to three times higher than that of North Korean workers in general. According to the labor regulations at KIC, working conditions guarantee the following: a 48-hour work week; no work on Sundays or holidays; receipt of the minimum wage of USD 50 per month; female workers are eligible to receive maternity leave of up to 150 days and gender discrimination is prohibited.

13. (U) Question: How do individuals become involved in forced labor? Are individuals tricked through false promises of fair employment? Are persons trafficked into forced labor? Are certain groups of persons more at risk of being exploited in forced labor (e.g. women and children, boys versus girls, certain ethnic groups, refugees, rural or urban areas, migrant workers, etc.)?

-For the last three years since the Ministry of Labor (MOL) began collecting the data, (from 2004 to 2006), workplace labor inspectors reported no violations of Article 7 (Prohibition on Forced Labor) of the Labor Standards Act.

-Migrant workers are an area of concern as potential victims of forced labor. In ref. B, post reported that the MOL had yet to acknowledge trafficking concerns in the labor force, especially among foreign workers. The MOL reported that over 1,800 migrant workers filed claims of delayed payment totaling 4.5 billion won

(USD 4.6 million), although the actual number of employers who withheld payment was likely much higher. Noting that there are an estimated 190,000 illegal migrant workers in South Korea, the UN Special Envoy on Human Rights of Migrants said it was likely that many of these workers' human rights were not fully protected given their illegal status in the country. During the parliamentary audit in October 2006, over 81 percent of foreign workers were found to have been suffering from delayed payments, excessive working hours, dangerous working conditions or physical assault from employers. Although detailed statistics are not available, the overwhelming majority of foreign workers are male adults from Mongolia, China, the Philippines, Burma, Bangladesh and other Southeast-Asian and South-Asian countries.

-Most foreign workers originally came to Korea with legitimate work visas (either via the former employee trainee system or the current employment permit system). At the completion of their legal work period in Korea, most workers choose to stay and work illegally, often earning more money than when they were working under the legal system. Many of these foreign workers are employed in the construction and manufacturing industries. Foreign workers are employed at both large and small companies.

-There continue to be numerous reports from NGOs of foreign women being subjected to forced-work conditions in bars, restaurants and entertainment venues. Since the anti-prostitution laws were passed in 2004, employers began to move away from traditional prostitution rings to other forms of debt bondage. Many women from the Philippines are brought to Korea thinking they will work as an entertainer (singer or dancer) in a bar and then forced to sell expensive drinks to customers. Some of these businesses also force the women into prostitution as a faster means of paying off their debt.

14. (U) Question: Are any estimates or reliable numbers available as to the extent or magnitude of the problem? What is (are) the source(s) of available information on forced labor? How reliable are the numbers and these sources?

-Information provided by the MOL on the observance or violation of laws on the ban of forced labor was collected from Nosanuri, the computer network of the Ministry of Labor established in 2002.

-Although the MOL has developed a comprehensive electronic tracking system, there remains a lack of reports of forced labor in the ROK. Counselors at the Migrant Workers Center told poloff that there are occasionally reports from foreign workers that Korean employers use elements of force in the workplace; the most common form being withholding the workers passport as a means to keep the employee linked to the company. The main problem in Korea is that foreign workers are willing to tolerate some less severe forms of forced labor in order to keep their job and maintain a decent income. Foreign migrant workers are more likely to switch employers rather than report forced labor to the MOL or police. Given the relatively decent working conditions throughout the country, there are only a very limited number of NGOs that follow labor issues. This is also partly due to the strong presence of labor unions in most workplaces. Therefore, there is very little information available about forced labor in Korea although anecdotal reports are limited.

Forced Labor Laws and Enforcement

15. (U) Question: What law or laws prohibit forced labor or related activities, such as laws against slavery, bonded labor, trafficking, or economic exploitation? Have there been any recent updates to such laws? Please describe in detail. Are the laws sufficiently developed to cover forced labor in its various forms?

-Article 12 of the ROK Constitution provides for the personal liberty and prohibits forced labor. The Labor Standards Act bans forced labor (Articles 7 and 107) and bonded labor (Articles 21 and 114).

-Laws to protect juveniles from sexual abuse and sexual exploitation and laws that protect victims of abuse or prostitution have been enacted and regulate a broad range of forced labor situations.

-Laws on the prevention of the sex trade and laws on the punishment of mediation of the sex trade are special laws enacted in 2004 and 2005, respectively, to prevent sexual exploitation and human trafficking.

-ROK Constitution Article 12 Paragraph 1 (Prohibition of Forced Labor) says: "Any citizen shall not be subject to forced labor unless pursuant to laws and legitimate procedures."

-The Labor Standards Act Article 7 (Prohibition of Forced Labor) says: "An employer cannot compel a worker to work against his/her free will by unfairly confining the worker's spiritual and physical freedom, including the use of violence, menace or detention."

16. (U) Question: Is forced labor by children specifically prohibited?

-Article 7 of the Labor Standards Act prohibits forced labor. In particular, Article 67 provides that a person in parental authority or a guardian cannot enter into a labor contract on behalf of a minor. Article 68 of the same Act provides that a minor can personally make a claim for wages, thereby strengthening the protection of minors.

17. (U) Question: What exceptions exist to laws prohibiting forced labor? Are there any national obligations or instances where the government requires work without pay?

-The Ministry of Justice (MOJ) reported that there are no laws whereby the government could require ordinary citizens to work without pay.

-Pursuant to Article 26 of the Military Service Law, except for the soldiers on active duty, all others soldiers can be temporarily recruited as public service workers to work as staff for administrative agencies, volunteers for international cooperation activities, or for artistic or sports activities.

-Furthermore, inmates can be involved in work outside of the prison pursuant to Article 67 of the Criminal Code and the Article 35 of the Act on Penal Execution of sentence, or carry out work commissioned by the private sector pursuant to the Article 3 of the

Act on the establishment and operation of privately-managed prisons.

¶8. (U) Question: What agency or agencies are responsible for implementing and enforcing forced labor laws?

-Labor inspectors from the Ministry of Labor carry out inspections at workplaces in order to prevent forced labor. Labor inspectors have law enforcement authority and can detain and arrest employers who violate labor law. Labor violators are referred to prosecutors from the Ministry of Justice for possible prosecution.

¶9. (U) Question: What legal remedies are available to government agencies that enforce forced labor laws (criminal penalties, civil fines, court orders), and are they adequate to punish and deter violations?

-An employer who violates Article 7 (Prohibition of Forced Labor) of the Labor Standards Act is subject to up to five years of imprisonment and/or fines of up to 30 million won (approximately USD 30,000) pursuant to Article 107 of the same Act.

-An employer who violates Article 20 (Prohibition of Predetermination of Nonobservance) or Article 21 (Prohibition of Offsetting Wages against Advances) of the same Act is subject to fines of up to five million won (approximately USD 5,000) pursuant to Article 114 of the same Act.

-Article 12 of the law on the protection of teenagers from sexual abuse provides that anyone who forces a teenager to offer sex for money is subject to a minimum of three years of imprisonment.

-Paragraph 1 of Article 18 of the Act on the Punishment of Procuring Prostitution and Associated Acts provides that anyone who forces a person to offer sex for money by resorting to violence, intimidation or fraud is subject to up to ten years of imprisonment or fines of up to 100 million won (approximately USD 100,000).

-Paragraph 3 of Article 18 of the same law provides that anyone who forces a person to engage in the sex trade by confinement or collective force, or who engages in human trafficking for the purpose of the sex trade is subject to a minimum of three years of imprisonment.

-Since the enactment of the anti-prostitution/anti-human trafficking laws of 2004, there has been a significant decrease in the number of prostitutes and red-light districts in Korea (see para. 4 of ref B).

¶10. (U) Question: What level of resources does the government devote to investigating forced labor cases throughout the country?

How many inspectors does the government employ to address forced labor issues? To the extent that the police or other institutions are involved, is funding for police or other institutions inadequate?

-The Ministry of Labor has a total of 1,670 labor inspectors (1,625 in 46 regional labor offices and 45 in the headquarters) who carry out inspections and attempt to prevent violation of the Labor Standards Act including forced labor practices at the workplace.

-The MOL noted that the number of labor inspectors rose by 362 in 2006 in an effort to improve the inspection activities at the workplace.

¶11. (U) Question: To what extent are complaints investigated and violations addressed? Please provide numbers of investigations, prosecutions, convictions, and sentences, including details on plea bargains and fines, if relevant and available. Are those convicted serving the time sentenced; if not, why not?

-The MOJ reported that they do not compile statistics relating specifically to forced labor cases. The MOL reported that their labor inspectors carried out a total of 17,700 workplace inspections in 2006. There were no prosecutions, convictions or sentences relating to forced labor as a result of these inspections.

-There are occasionally cases in the media relating to wages that are withheld from employees or other unfair labor practices. Counselors at the Migrant Workers Center routinely work with employees who report various forms of forced work, mostly in the form of withheld passports. These cases are dealt with by the counselors at the center directly and are typically not referred to labor inspectors. Counselors at the center told poloff that many employers do not realize it is illegal to withhold a worker's passport and are generally responsive when advised to return the passport to the worker to avoid legal action.

¶12. (U) Question: Please provide an update on government efforts to address the issue of debt bondage in the sex industry.

-See ref B for full details relating to ROKG efforts to address debt bondage in the sex industry.

¶13. (U) Question: Has the government provided awareness-raising and/or training activities for officials charged with enforcing forced labor laws?

-The MOL said that new labor inspectors receive five weeks of official training before they assume their duties. Four weeks are spent in the classroom learning ROKG policies and regulations and one week is spent on the job with regional labor inspectors. Although the training focuses on the articles in the Labor Standards Act (including those on forced labor) there is not a specific module or emphasis given to forced labor issues during the training.

Government Policies and Programs

¶14. (U) Question: Does the government have any policies in place to combat forced labor, such as national plans of action, etc.? Have government officials issued statements against forced labor? Please provide a brief history of government efforts to combat forced labor over the past 5 years.

-ROKG officials have not issued any statements against forced labor, as they do not see forced labor as a serious problem in Korea. Therefore, there have not been any significant efforts to report in the past five years other than the ongoing labor inspections.

-Following the upcoming release of the 2007 Trafficking in Persons report, we expect to see increased efforts to identify and prevent instances of forced labor in the country as this is one of the report's recommendations for the ROKG.

¶15. (U) Question: Does the country have programs to combat forced labor? Please describe. These could include awareness raising efforts as well as efforts to assist individuals in or at-risk of forced labor (i.e. residence permits, access to health and education services and access to the regular labor market). Has the government provided funding or other forms of support to foreign or domestic NGOs or IOs that have programs to combat forced labor? Does the government have the resources to aid individuals rescued from forced labor situations?

-The Ministry of Government Administration and Home Affairs assists NGOs with labor-related projects. It reviews the suitability of

funding requests and provides money (up to one hundred million won per NGO [USD 100,000]). The subjects of these projects include disabled people, female workers and foreign workers. There were no reported instances of NGOs requesting funding for forced labor projects.

-The MOL administers the Employment Permit System (EPS) which is the mechanism to bring foreign workers to Korea. For a full description of this program, see para. 53 in ref B.

Nature and Incidence of Child Labor

¶16. (U) Question: What is the child labor situation in the country? Are there any estimates of the magnitude of the problem? In what sectors do children work and what tasks do they perform? In what regions do they work? Are children in the country involved in the worst forms of child labor? Specifically, are children in South Korea, both of Korean and outside origin, subjected to commercial

sexual exploitation (pornography, prostitution, etc.)?

-There are no reports of illegal child labor in Korea. Pursuit of education by minors is a paramount concern in Korea and has led to extremely high rates of school attendance for children (elementary school: 99 percent; middle school: 95.9 percent; high school 91 percent). The worst forms of child labor are not an issue in Korea.

There are no reports of children being involved in sexual exploitation in Korea.

-Juveniles (youths under the age of 18) often work part-time at fast food stores, restaurants, Internet cafes, convenience stores, and manufacturing companies. The Labor Standards Act includes provisions to protect minor workers.

Child Labor Laws and Enforcement

¶17. (U) Question: What laws and regulations have been promulgated on child labor, such as minimum age(s) for employment or hazardous forms of work? If there is a minimum age for employment, is that age consistent with the age for completing educational requirements? Are there exceptions to the minimum age law? What protections exist for older children who may legally work? What laws govern the worst forms of child labor, such as child prostitution, the minimum age for admission to the military, etc? What are the penalties for violations of relevant laws and regulations? Do the country's laws define the worst forms of child labor or hazardous work as the ILO defines those terms? If the country has ratified Convention 182, has it developed a list of occupations considered to be hazardous labor, as called for in article 4 of the convention?

-The Labor Standards Act, Article 64 states "A person under the age of 15 shall not be employed as a worker."

-According to the Basic Education Act Article 8, the period of compulsory education is six years in elementary education and three years in secondary education, meaning the minimum age for completing mandatory educational requirements is 16. Therefore, the minimum age for employment (15) is not consistent with the age for completing educational requirements (16).

-Exceptions to the minimum age law: According to the Labor Standards Act Article 64, Enforcement Decree Article 31, juveniles between 13 and 15 years of age who hold an employment certificate issued by the Minister of Labor may be employed as workers. As long as the purpose is to participate in artistic performances, employment certificates may also be issued to those under 13.

-According to the Labor Standards Act, the employer should: have a "certificate of minors" when employing a worker below the age of 18 (Article 64); abide by the limitations in their work hours (Article 69) including night shifts and holiday shifts (Article 70) and overtime work (Article 71); and comply with their prohibition from working in a mining environment (Article 72).

-The Labor Standards Act Enforcement Decree Article 31 Table 2 sets out a list of occupations where the employment of minor workers is prohibited, as called for in article 4 of Convention 182 (NOTE: The ROK ratified ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor in March 2001. END NOTE).

¶18. (U) Question: Has the government designated an authority to implement and enforce child labor laws? What legal remedies are available to government agencies that enforce child labor laws (criminal penalties, civil fines, court orders), and are they adequate to punish and deter violations? To what extent are

complaints investigated and violations addressed? What level of resources does the government devote to investigating child labor cases throughout the country (including the worst forms of child labor)? How many inspectors/investigators does the government employ to address child labor/worst forms issues? How many child labor/worst forms investigations have been conducted over the past year? How many have resulted in fines, penalties, or convictions? Has the government provided awareness raising and/or training activities for officials charged with enforcing child labor laws?

-Legal remedies available to government agencies for the purpose of protecting minor workers under age of 18 include: judicial punishment (imprisonment), fine, and court order. ROKG provisions are adequate to punish and deter violations.

-Minor workers, upon being unfairly treated in violation of the standards set out in labor-related laws and regulations, can report to the provincial labor offices of the MOL. Upon receiving a report, the labor office investigates and, if the employer's violation is confirmed, issues a corrective order. Unless the employer follows the order, he/she is subjected to judicial procedure.

-In 2006, the MOL reported that 412 out of 603 cases reported by minor workers were confirmed to have violated labor laws, while 191 cases were confirmed not to have violated any laws.

-Of the 412 violation cases, the business owners took corrective actions in 340 cases. The remaining 72 cases were subjected to judicial proceedings. The MOJ could not advise the disposition of these 72 cases.

-As of May 8, 2007, the MOL reported that 1,670 labor inspectors were carrying out their responsibilities as both labor inspectors and law enforcement authorities, to monitor labor conditions, including those of minor workers.

-In 2006, they inspected 1,502 enterprises employing minor workers to ensure compliance with labor-related laws and regulations. Inspectors reported 1,718 violation cases in 876 enterprises. There were no reported cases of the worst forms of child labor as set out in ILO Convention 182.

Government Policies and Programs to Combat Child Labor/Worst Forms of Child Labor

119. (U) Question: Does the country have a comprehensive policy or national program of action on child labor and/or the worst forms of child labor? If so, to what degree has the country implemented the policy and/or program of action and achieved its goals and objectives? Has the government made a public statement/commitment to eradicate the worst forms of child labor? Please provide a brief history of government efforts to combat child labor over the past 5 years.

-Over the past 5 years, the MOL reported that the ROKG has drawn up and implemented new programs each year, including: giving guidance to and conducting monitoring of enterprises that employ minor workers; educational campaigns to publicize appropriate labor conditions for minor workers; and commissioning research projects to provide suggestions for improved policies and systems. Details for 2006 were as follows:

--Supervision and monitoring: Of 1,502 enterprises, 1,718 cases in 876 enterprises were found to have violated law and ordered to take corrective action.

--Drafted and distributed 385,000 copies of awareness-raising leaflets to inform the public concerning part-time youth employment

--Held education sessions for 8,878 people on labor-related laws involving juveniles

--Public awareness efforts: Staged the "Working 1318 - What's it about?" campaign (Oct. 20 to Dec. 18, 2006) - including radio spots (11 times); newspaper ads (10 times); leaflets in the subway (14 times); magazine ads (5 times); broadcast interviews (7 times); online media publicity (including the opening up of a dedicated homepage on youth labor protection); and a signature gathering event on youth labor protection (once).

120. (U) Question: What initiatives has the government supported to prevent children from entering exploitive work situations, to withdraw children engaged in such labor, and to advocate on behalf of children involved in such employment and their families? (If

possible, please provide information on funding levels for such initiatives.) Does the government support programs to combat child

labor through the provision of education services, including non-formal and vocational education? (If possible, please provide information on funding levels.) Do the country's laws/regulations call for universal or compulsory education? Are these requirements enforced? Is education free or are fees charged for attendance, books, supplies, or transportation?

-The ROK has a compulsory education system for elementary and middle school. In 2006, the Ministry of Education reported that the entrance rate for elementary and middle school reached 99 percent.

-The government provides free public education during the required years from elementary school through middle school, including all materials, books and transportation.